

**NATIONS UNIES**  
**HAUT COMMISSARIAT DES NATIONS UNIES**  
**AUX DROITS DE L'HOMME**

**UNITED NATIONS**  
**OFFICE OF THE UNITED NATIONS**  
**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE: UA G/SO 218/2 G/SO 214 (107-9) G/SO 214 (3-3-16) G/SO 214 (53-24)  
SAU 10/2012

15 August 2012

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 15/18, 16/5, 17/2, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the alleged torture in detention of Mr. **Ahmed El-Sayed**, a human rights lawyer who represents a number of Egyptian citizens who have allegedly been detained arbitrarily in Saudi Arabia.

Mr. Ahmed El-Sayed was the subject of an urgent appeal sent to your Excellency's Government on 25 May 2012, by the Special Rapporteur on the situation of human rights defenders, the Chair-Rapporteur of the Working Group on arbitrary detention, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the independence of judges and lawyers, and the Special Rapporteur on extrajudicial, summary or arbitrary executions. Regrettably, no reply has yet been received from your Excellency's Government in relation to this communication.

According to the information received:

On 8 July 2012, Mr. El-Sayed was charged with drug trafficking. On 18 July, he was reportedly brought before Jeddah Criminal Court, where his hearing was rescheduled until 5 September 2012.

According to reports, Mr. El-Sayed is representing himself as he could not afford to pay the substantial fees requested by his ex-lawyer Mr. Hesham Hanbouli, whose appointment had been suggested by the Egyptian Consulate and agreed by Mr. El-Sayed. Sources indicate that Mr. El-Sayed has not been allowed access to law books from which he can prepare his legal defence. Saudi authorities have reportedly agreed on the presence of the legal counsel of the Egyptian Consulate during Mr. El-Sayed's hearings. The Consulate will also reportedly be provided with a list of charges brought against Mr. El-Sayed.

During the court proceedings of 18 July, Mr. El-Sayed reportedly lifted his shirt to demonstrate evidence of torture on his chest and back, committed against him during his detention in Zahban Prison, and requested a medical examination. While the judge reportedly requested further investigation of the torture claims, Mr. El-Sayed has not yet been medically examined.

It is further reported that on 27 July 2012, Mr. El-Sayed fainted and was taken to hospital where he remained for six hours, during which time he was diagnosed with malnutrition and low blood pressure by doctors.

As indicated in a previous communication to your Excellency's Government on 25 May 2012, Mr. El-Sayed was detained at Jeddah Airport on 17 April 2012, following which he was reportedly tried in absentia and sentenced to one year's imprisonment and 20 lashes for allegedly insulting the King of Saudi Arabia. On 21 April 2012, Mr. El-Sayed reportedly confessed to drug trafficking while being subjected to physical and mental torture in Zahban Prison, Jeddah, including beatings in different parts of the body. It is reported that on 24 April 2012, the Saudi Embassy in Egypt issued a statement declaring that Mr. El-Sayed had been arrested for having 21,380 Xanax tablets in his possession. Reportedly, Egyptian officials at Cairo Airport have declared that his luggage was searched before he boarded the plane, with no drugs of any kind found therein.

Sources indicate that the use or distribution of Xanax is prohibited in Saudi Arabia, and that the death penalty can be imposed on those convicted of possession of drugs. The prosecution, in Mr. El-Sayed's case, has reportedly requested the court for the imposition of the death penalty.

Grave concern is expressed for the physical and psychological integrity of Mr. El-Sayed, particularly in light of the allegations of torture, his severe ill-health and the possible imposition of the death penalty. Further concern is expressed that the alleged torture of Mr. El-Sayed and the alleged charges and trial brought against him may be directly related to his legitimate and peaceful work in the defence of human rights, particularly the legal assistance which he provides to Egyptians who are allegedly arbitrarily detained in Saudi Arabia. Concern is also expressed at the alleged denial of access to law books by Mr. El-Sayed from which he can adequately prepare his legal defence, in accordance with international norms and standards related to a fair trial.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned person is arbitrary or not, we would like to

appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR).

In this connection, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.
- article 9 paragraph 1 which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.
- article 9 paragraph 3 point c) which provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.
- article 12 paragraphs 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be

protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Furthermore, we would like to draw your Excellency's Government's attention to article 12 of the Convention against Torture (CAT), which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture. I would also like to draw your Government's attention to paragraph 6b of Human Rights Council Resolution 8/8, which urges States "To take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold those who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and to take note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture".

We would further like to draw your Excellency's Government's attention to article 15 of the CAT provides that, "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made." We also recall that paragraph 6c of Human Rights Council resolution 8/8 of 2008 urges States "to ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made".

We would also like to refer your Excellency's Government to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, and in particular to the Principle 6, which states that "the principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected."

Furthermore, with regard to concerns expressed regarding the alleged charges brought against Mr. El-Sayed we would like to refer your Excellency's Government to the Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular to Principle 16, which provides that "When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving

torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice".

Moreover, we would like to draw the attention of your Excellency's Government to Principle 12 of the Guidelines on the Role of Prosecutors, which states that "Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system, as well as to Principle 13, which provides that "In the performance of their duties, prosecutors shall: (a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination; (b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect".

With regard to the legitimate activity of Mr. El-Sayed as a human rights lawyer, carried out reportedly through providing legal assistance in defense of human rights, we would like to reiterate the Principle 16 of the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Havana, Cuba, from 27 August to 7 September 1990, which provides that "Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics"; as well as Principle 17, according to which "Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities" and Principle 18, which states that "Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions".

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victim?

3. Please provide information on the charges and trial brought against Mr. Ahmed El-Sayed, and how these measures are compatible with international norms and standards, as stated, inter alia, in the UDHR and the ICCPR.

4. Please confirm if forensic examination has been performed to corroborate Mr. Ahmed El-Sayed's claims of torture. If no medical or forensic examination was conducted, please explain why.

5. Please provide information on the measures undertaken to ensure that any statements on confession obtained under torture is excluded from judicial proceedings.

6. Please confirm whether Mr. Ahmed El-Sayed has access to resources including law books in order to prepare his legal defense, as compatible with international norms and standards related to a fair trial.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned person are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

El Hadji Malick Sow  
Chair-Rapporteur of the Working Group on Arbitrary Detention

Margaret Sekaggya  
Special Rapporteur on the situation of human rights defenders

Gabriela Knaul  
Special Rapporteur on the independence of judges and lawyers

Juan E. Méndez  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

